

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KYKO GLOBAL, INC., et al.

Plaintiffs,

vs

Civil Action

No. 18-1290

PRITHVI INFORMATION SOLUTIONS, LTD.,
et al.,

Defendants.

Transcript of case management proceedings held on
Tuesday, February 5, 2019, United States District Court,
Pittsburgh, Pennsylvania, before the Honorable Peter J. Phipps,
U.S. District Court Judge.

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Proceedings recorded by digital stenography; transcript
produced by computer-aided transcription.

P R O C E E D I N G S

(In open court.)

THE COURT: Thank you, you may be seated.

We're here this morning on the record in Kyko Global, Inc. v Prithvi Information Solutions, LTD, Case No. 18-cv-1290. Will counsel for the parties please rise and introduce themselves.

MR. MACYDA: Jason Macyda on behalf of the Plaintiffs.

THE COURT: Welcome.

MR. MACYDA: Thank you, Judge.

MR. RODKEY: Joseph Rodkey on behalf of the Plaintiffs, Your Honor.

THE COURT: Welcome.

MR. GINSBERG: Your Honor, Michael Ginsberg from Jones Day on behalf of the SSG Defendants.

THE COURT: Welcome.

MR. GOETZ: Good morning. John Goetz from Jones Day on behalf of the SSG Defendants.

THE COURT: Nice to see you.

MR. BAKER: Doug Baker from Jones Day on behalf of the SSG Defendants.

THE COURT: Welcome.

So there's been a lot of filings in this case, not much judicial resolution to any of the filings yet; I apologize for that. At the same time I think it just made a lot of sense

1 to find out where we were. So, believe it or not, I was
2 looking forward to this conference to just get a handle on
3 where things stand in this case.

4 I understand that there's past litigation, other
5 litigation in other forums. It looks like there was -- I'll
6 ask this of Plaintiff. I understand that there was a lawsuit
7 brought by the United States Department of Justice in the State
8 of Washington?

9 MR. MACYDA: That's correct, Your Honor. That's on
10 Madhavi -- you're referencing Madhavi Vuppalapati, and she is
11 one of the -- she is not an SSG Defendant, but she is one of
12 the Defendants in this case wherein, given the civil action
13 that we instituted in front of Judge Pechman in the Western
14 District of Pennsylvania [sic], that led to an investigation by
15 the FBI, the IRS, and the DOJ, which in turn resulted in an
16 indictment against Miss Vuppalapati.

17 THE COURT: In the Western District of Washington.

18 MR. MACYDA: Correct.

19 THE COURT: That civil action was initiated in
20 Pennsylvania or in Washington?

21 MR. MACYDA: That was initiated in Washington.

22 THE COURT: Okay. Is there also Hong Kong litigation?

23 MR. MACYDA: There is, Your Honor. And that's
24 derivative of the underlying civil litigation that was filed
25 with Judge Pechman in the Western District of Pennsylvania

1 [sic] and the short version of it is, Your Honor, in that
2 particular case we received a money judgment that's
3 approximately \$134 million.

4 What we discovered in doing our due diligence
5 investigation is that there are accounts receivable showing on
6 Plaintiff Prithvi Solution, Inc.'s books and records that show
7 approximately \$23 million, according to the books and records.
8 We're owed by Defendant in this case, Value Team Corporation --
9 which has not been served yet; they're not an SSG Defendant --
10 and the SSG entities in this case.

11 So what transpired in that case, referring to the
12 civil case out there in Washington, is that we entered a
13 letters rogatory petition to Judge Pechman to ask her to not
14 compel but request the Hong Kong court to compel certain
15 witnesses over there in Hong Kong to appear in Hong Kong to
16 produce deposition testimony relative to those accounts
17 receivable. And that matter is being contested by the
18 Jones Day law firm in Hong Kong. And that litigation is
19 ongoing in Hong Kong as we speak. The SSG Defendants in the
20 Hong Kong litigation just filed their reply brief.

21 THE COURT: So if I understand the crux of your
22 action, it's that you're suing -- your clients are suing a lot
23 of people in the Western District of Pennsylvania, some of whom
24 you believe actively defrauded your clients and some of whom
25 are due money from -- have money that you think you can get

1 because you -- because they had transactions with the entities
2 that have been proven to have defrauded your clients, and you
3 want that money as satisfaction for the wrong that I guess your
4 clients allege to have been harmed by?

5 MR. MACYDA: We plead those claims in the alternative
6 in this case, Your Honor; but replead those -- I believe those
7 are counts starting around nine or ten in the complaint -- in
8 the alternative for breach of contract and quasi-contract
9 claims.

10 To answer your main question, we believe all the
11 Defendants in this particular case entered into a scheme to
12 divert \$35 million worth of bond funds from PSI to their own
13 personal benefit. That is the claim in this case. In the
14 Washington litigation, that had to do with a loan factoring
15 agreement where certain Defendants in that case defrauded the
16 Kyko entities out of roughly, I think, 18 million; then with
17 interest and trebling of damages, that's how it crept up into
18 the hundred-plus million dollar figure.

19 THE COURT: And so were these separate transaction
20 occurrences or were they all related to the same transaction or
21 occurrence?

22 MR. MACYDA: We say they're separate transactions,
23 Judge.

24 THE COURT: And so the transactions at issue in this
25 case took place in, what, October of 2010? Do I have that

1 right?

2 MR. MACYDA: Around about that time, Judge.

3 THE COURT: Around that time?

4 MR. MACYDA: Right.

5 THE COURT: And the other transactions, when did those
6 take place that are separate?

7 MR. MACYDA: Around 2011.

8 THE COURT: Okay.

9 MR. MACYDA: 2011, 2012 is when we learned of what
10 transpired.

11 THE COURT: Okay. Looks like it's on or about
12 September 6th, 2010, is what the -- is what some of the
13 allegations in the complaint say.

14 Okay. Now, I understand that there's a motion for
15 international service, I believe, on three entities or
16 individuals, entities, none of which include the SSG kind of
17 family of Defendants, is that correct?

18 MR. MACYDA: That's correct, Judge. That's because
19 the SSG Defendants are represented by Jones Day.

20 THE COURT: Well, let me just use that. Have you made
21 efforts to serve any of the SSG Defendants?

22 MR. MACYDA: Have we made efforts to serve them? No,
23 we have not, Judge.

24 THE COURT: Okay.

25 MR. MACYDA: We have discussed this with the SSG

1 Defendants in this case; and our position on that, Judge, is as
2 follows: One, we initially offered to -- it's contested, but
3 we initially offered to have service effected and then we were
4 told we will only accept service if all the depositions and the
5 like take place overseas. We didn't agree to that. So we
6 haven't -- that was the initial term and condition that was
7 placed on it. We rejected it.

8 And then after that, we filed, as we pointed out in
9 our briefing in this case, we filed the motions for alternate
10 service on PISL and Miss Vuppalapati and Mr. Jayaraman. And we
11 believe, as indicated in our briefing, that the proper sequence
12 for this, Judge, is because there are common issues of law and
13 fact among all the Defendants, we assert a civil RICO claim on
14 the state claims, we assert conspiracy, concert of action,
15 aiding and abetting, a breach of fiduciary duty, that we
16 believe the proper course is to have all Defendants appear
17 roughly at the same time.

18 Instead, what's transpiring and what the SSG
19 Defendants have done in this case is they don't want to do
20 that. They want to go right ahead right now with their motion
21 to dismiss before the other Defendants even show up, and
22 there's a reason for that. One was -- is they're trying to
23 advance the litigation in the Hong Kong proceedings. And
24 that's why they filed the motion that they originally filed
25 back in November, to get an initial scheduling conference.

1 The other reason for that, Judge, is that they're
2 scabbling between the Defendants, the SSG Defendants that claim
3 that they've been defrauded relative to the bonds that are at
4 issue in this particular case. So our view is simply as
5 follows: Is that, one, let's get everybody served at the same
6 time. Two, after that, let's send this case to mediation.
7 Judge Schwab has already -- he entered an order initially when
8 this case was filed to send it to mediation, number one.
9 Number two, although contested by the SSG Defendants, there is
10 previous overture to have the parties discuss settlement in
11 this case. We've received word through Miss Vuppalapati's
12 brother that they may be amenable to discussing settlement in
13 this case.

14 So we believe, one, service at the same time; two,
15 mediation --

16 THE COURT: Okay. I understand the outline --

17 MR. MACYDA: Okay.

18 THE COURT: -- as indicated. If you think service at
19 the same time is so important, why didn't you move for
20 international service for all Defendants at the same time? Why
21 did you only move for three of them? Because it looked to me
22 like almost all of them, save potentially one, would require
23 some form of international service.

24 MR. MACYDA: Well, because the Jones Day law firm
25 indicated that they would represent all of the -- all of the

1 SSG Defendants.

2 THE COURT: But when they attached, allegedly -- I
3 haven't heard from them yet -- but when they allegedly attached
4 conditions upon service that were disagreeable to you --

5 MR. MACYDA: Right.

6 THE COURT: -- why didn't you just say: Fine, we will
7 move -- you don't want to do it the easy way, potentially, we
8 can do it the hard way. We will now move for service
9 internationally of them. It strikes me as kind of an
10 inconsistency if you want everything to begin at the same time
11 when you've moved for partial service of a group of Defendants
12 and left others out.

13 MR. MACYDA: Well, the reason for that, Judge, it was
14 very obvious, at least to us, that the SSG Defendants here were
15 willing to accept service. So our thought process was let's
16 file the international motions that I just mentioned. Once
17 those are granted, then we'll go to the SSG Defendants.
18 Here's --

19 THE COURT: But that's different than your position.
20 That shows a tiered approach to service; but you advocated a
21 minute ago that you wanted service at the same time. And I
22 understand that there was a wrinkle in that.

23 Before I hear from the SSG Defendants, my first -- my
24 final question to you is at what day approximately did you
25 realize that you weren't going to be able to obtain a waiver of

1 service or an agreement of service from the SSG Defendants?

2 MR. MACYDA: I would say that would be right about
3 when we filed the motions for alternate service on the other
4 Defendants.

5 THE COURT: All right.

6 MR. MACYDA: And again, Judge, we viewed that --

7 THE COURT: So that was approximately
8 November 18th and November 19th of 2018 then, more or less.

9 MR. MACYDA: Correct. And we didn't believe it
10 necessary to file the international motion with the SSG
11 Defendants because we knew that they were going to accept
12 service.

13 THE COURT: But my question is when did you realize
14 that they would not accept service?

15 MR. MACYDA: Well, in their -- I believe in their
16 motion for initial scheduling conference, the SSG Defendants
17 then stated that no, no, no; we're willing to accept service
18 now.

19 THE COURT: Okay.

20 MR. MACYDA: So they retracted -- the conditions that
21 were originally there were then retracted in their motion for
22 initial scheduling conference.

23 THE COURT: So the date that you realized that an
24 agreement for service would not work was the date that they
25 moved for an initial scheduling conference?

1 MR. MACYDA: Yes, that's when they indicated there, at
2 least we heard for the first time, that the initial conditions
3 seemed to be withdrawn.

4 THE COURT: Well, I've heard from you. Let me hear
5 from SSG Defendants. Who is going to be speaking for the SSG
6 Defendants?

7 MR. GOETZ: Your Honor, John Goetz; good morning.

8 THE COURT: So I've heard a lot about service in this
9 case and kind of -- let me start with this basic question.
10 Your clients -- you represent the SSG Defendants. They haven't
11 been served in this case.

12 MR. GOETZ: Correct, despite multiple offers to accept
13 service through counsel.

14 THE COURT: So when you say multiple offers, I heard
15 from Plaintiff's counsel, Mr. Macyda, and he indicated that
16 those offers all had contingencies on them. Is that an
17 accurate -- does that accurately reflect your understanding of
18 the offers?

19 MR. GOETZ: No. That's a wrong statement to the
20 Court.

21 THE COURT: Okay.

22 MR. GOETZ: And we stated on November 16th in our
23 filing that we've contacted Plaintiff's counsel three times to
24 discuss service. Then we complied with the Court's order to
25 have a meet and confer conference. We said we're willing to

1 accept service again. And this morning I asked Mr. Macyda if
2 he's willing to serve us this morning. No conditions on any of
3 those.

4 THE COURT: All right.

5 MR. GOETZ: Still we haven't been served.

6 THE COURT: All right. I'm not going to spend too
7 much longer with you based on that.

8 Mr. Macyda, Mr. Goetz just represented that they're
9 willing to accept service, no condition -- without any
10 conditions. Is that a problem for you?

11 MR. MACYDA: Well, the only problem -- when you say a
12 problem, we have no problem serving them with a complaint
13 today, but this bleeds into one of the other motions that we
14 filed previously here today, where we asked to either have the
15 motion to dismiss that they filed without -- after the meet and
16 confer to either be stricken temporarily or be stayed to allow,
17 again, the rest of the Defendants an opportunity to appear.
18 So --

19 THE COURT: I don't think that that's a good
20 sequencing. I think that if there is multiple Defendants and
21 they've been served, they can move to dismiss -- that's their
22 choice. And it seems if you want to delay service because you
23 don't want to deal with a motion to dismiss, well, sooner or
24 later there is a 90-day clock for service; it's in Rule 4(m).
25 It has out clauses, of course, for service in foreign

1 countries, and that's understandable because that can take more
2 time and sometimes require motions such as the one that you
3 filed. But at some point in time it seems that if they're
4 willing to accept service, and they're willing to brief the
5 issues that they've presented -- and they've presented issues
6 such as, as I understand it, lack of personal jurisdiction, and
7 we may get into this co-conspirator theory of personal
8 jurisdiction -- and if they want to raise claims such as
9 failure to state a RICO claim and even a forum non conveniens,
10 it seems that it makes the most sense to move with those.

11 And I think as that briefing is going forward, it
12 makes sense -- the motion for service by publication has been
13 fully briefed, I think. It's in some ways awaiting a decision
14 from the Court. I'm happy to turn attention to that; but it
15 struck me that there was something unusual going on because
16 there is an effort to serve three of the Defendants and not the
17 others, is what the papers indicated to me.

18 So I don't know if you need to confer with your
19 clients, but are you going to be able to effectuate service in
20 the next -- by the end of the week on -- through this consent
21 to service that counsel, the Jones Day law firm on behalf of
22 the SSG Defendants, has offered?

23 MR. MACYDA: Your Honor, yes, we can serve the SSG
24 Defendants this week. I mean, again, our position was of the
25 timing of issues, it wasn't to hold the service in perpetuity.

1 THE COURT: Okay. So I think the next -- so I think
2 that if that happens, then this case begins to get on a
3 slightly more regular course. They've got a motion to dismiss
4 that has, from what I can tell, been pending for about two
5 weeks, if I've got that right -- since January 15th. And you
6 have not served -- on opposition to that motion to dismiss, you
7 served a motion to strike that motion to dismiss. But
8 that's -- I will probably be able to resolve that motion to --
9 the motion to strike the motion to dismiss fairly soon. I
10 think it makes sense for you to plan a response date to their
11 motion to dismiss.

12 Given that it's already been pending for several
13 weeks, do you need more than ten days to respond to their
14 motion to dismiss?

15 MR. MACYDA: I do, Judge, and there are two reasons
16 for that. One is we intend to file a motion for jurisdictional
17 discovery here prior to the hearing of the motion to dismiss.
18 So we think that the better course is to set a date for us to
19 file the motion for jurisdictional discovery. And, obviously,
20 pending the Court's ruling on that, will then sort of dictate
21 the timing of the response to the motion to dismiss.

22 The other factor in there, Judge, is just simply a
23 personal one. In three or four days I'm going to be leaving on
24 vacation for about nine, ten days out of the country.

25 THE COURT: Okay. I mean it strikes me, though, that

1 this motion has been pending for a while. There's been no
2 response to it. If you -- if your position is that there needs
3 to be jurisdictional discovery, that's one thing. But that
4 would strike me as a basis to have been raised shortly after
5 the motion was pending.

6 Let me hear from SSG Defendants in terms of -- I think
7 the one question I had that I didn't get to was I was a
8 little -- despite the clarity that you provided with regard to
9 accepting service, I'm not exactly sure where you stand with
10 respect to a Rule 26(f) conference. Originally it seemed like
11 your clients wanted one, and then it seems like you didn't want
12 one, it seems like this is related to personal jurisdiction in
13 some way potentially; but I'd like to kind of get an
14 explanation from you because I have to say I was a little
15 surprised when you asked for a motion, the motion wasn't
16 granted just in the normal course, we triggered it, and then
17 you said actually we didn't want that. Can you explain that a
18 little bit?

19 MR. GOETZ: Sure, Your Honor. We had filed a motion
20 for initial conference, not a Rule 26 conference.

21 THE COURT: Okay.

22 MR. GOETZ: Just an initial conference to discuss two
23 issues: Getting our client served and to set down a schedule
24 to file a motion to dismiss for lack of personal jurisdiction
25 and subject matter jurisdiction.

1 THE COURT: Okay.

2 MR. GOETZ: When that motion was denied as moot
3 shortly before the end of 2018 --

4 THE COURT: Yes.

5 MR. GOETZ: -- Your Honor entered a scheduling order.
6 That order is operative and we wanted to comply with it. We
7 filed a motion for relief of that order, one that was not acted
8 upon before the Court's order on a Rule 26.

9 THE COURT: Right.

10 MR. GOETZ: But we don't think a Rule 26 conference is
11 ripe at the moment. There are serious, in our view,
12 dispositive issues of personal jurisdiction. The Plaintiffs
13 are not entitled to jurisdictional discovery under the clear
14 case law. We addressed that in a footnote of our brief. They
15 should file their response; and if they do make a prima facie
16 case -- which they cannot in this case -- then we could talk
17 about jurisdictional discovery. But the case law is clear that
18 they haven't made out a prima facie case. The only contact
19 with Pennsylvania is a couple of wire transfers.

20 THE COURT: I saw in your case law, as -- I saw you
21 cite, I believe, Third Circuit case law that said that is
22 insufficient contact, if I recall your brief correctly.

23 MR. GOETZ: Correct.

24 THE COURT: I can't remember the case name.

25 MR. GOETZ: There is no right and no need for

1 jurisdictional discovery. Again, the motion we're hearing
2 about this morning is just one more attempt to forestall a
3 decision on our motion. They have to prove that jurisdictional
4 discovery is warranted, and on this complaint and RICO
5 statement it's not.

6 THE COURT: Okay.

7 MR. GOETZ: So we think that they should get on with
8 it and within ten days file their response because they've
9 certainly had a good look at our papers, enough to file a
10 motion to strike. But they should get on with it, in ten days
11 file their response.

12 THE COURT: So, Mr. Macyda, do you have any -- when
13 you say you're contemplating filing a motion for jurisdictional
14 discovery, do you have any allegations connecting, linking this
15 case to this forum beyond wire transfers at present?

16 MR. MACYDA: Do we have any -- I'm sorry, what was the
17 question?

18 THE COURT: Any other facts linking this case to this
19 forum beyond wire transfers?

20 MR. MACYDA: Yes, some of the SSG Defendants actually
21 set up one of the entities in Hong Kong to receive some of
22 these monies, a Prithvi entity that there's supposedly --

23 THE COURT: The point is in this forum -- I'm not
24 saying nothing unrelated to the transactions you're talking
25 about, but I'm specifically concerned with this forum. So I

1 understand that there was a wire transfer that went through
2 this forum. Is there anything else linking the allegations
3 that you have against any of the Defendants, but particularly
4 the SSG Defendants, to this forum beyond receipt of a wire
5 transfer? At present. I know you want discovery; but at
6 present do you have anything further?

7 MR. MACYDA: When you say evidence, Judge, I mean they
8 were contacting people based in Pennsylvania, as our complaint
9 indicates, to set up the route that is in our RICO case
10 statement that ends up in Hong Kong, that ends up in the hands
11 of SSG and VTC. And that's quite an elaborate -- as the Court
12 is -- I'm sure has read our RICO case statement, is quite an
13 elaborate maneuvering that took place. We indicate that they
14 coordinated their efforts with people here in Pennsylvania to
15 effect that; one of which, of course, was the wire transfers,
16 and that is one of the RICO predicate offenses, is money
17 laundering which has its own separate jurisdictional
18 provision -- that's completely ignored, by the way, by the SSG
19 Defendants in their motion to dismiss and the like --

20 THE COURT: Well, I mean I don't want to necessarily
21 hear your arguments on the motion to dismiss now because I'd
22 really like to hear your arguments in writing, and we'll need
23 to set a time for that. I'm conscious of the fact that you're
24 going to be out of town. What day do you get back? What day
25 do you return to the country?

1 MR. MACYDA: I believe I leave this weekend; I think I
2 come back -- let me get my calendar -- I think I get back on
3 the 18th, if I recall correctly.

4 THE COURT: Okay. All right. I will set a response
5 date of February 28th. I think that's very generous because I
6 think you already have familiarity with their pleadings, as
7 you're willing to make arguments on it. I understand that you
8 have vacation, but February 28th respond to their motion to
9 dismiss.

10 If you have -- how many pages do you need to respond?
11 Do you need 15?

12 MR. MACYDA: They submitted about 30, so combined,
13 about high 20s, if you look at their motion and brief combined?
14 So I would say at least 25. I just --

15 THE COURT: No, no, no. I read it. I thought it was
16 less.

17 How many was it?

18 MR. GOETZ: We're checking right now, Your Honor.

19 THE COURT: There's going to be parity or close to
20 parity.

21 MR. GOETZ: It's 22 pages with the conclusion at the
22 top.

23 THE COURT: Okay. You can have 25, okay? Is 25
24 enough?

25 MR. MACYDA: Sure.

1 THE COURT: Okay. I don't think it needs 25, but you
2 can have 25.

3 As far as a reply, is 12 pages sufficient?

4 MR. GOETZ: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. MACYDA: Your Honor, just so I'm clear, are we not
7 afforded an opportunity to file the motion to request
8 jurisdictional discovery?

9 THE COURT: No, we're going to schedule that in a
10 minute.

11 MR. MACYDA: Okay.

12 THE COURT: We're going to schedule that in a minute.
13 As far as a date for reply, I have afforded, I think -- I've
14 afforded respect to Mr. Macyda's schedule, so I want to afford
15 similar respect to SSG's Defendant's counsel. You have 12
16 pages; on the 28th I'm looking at maybe about 12 days,
17 March 12th. That's a page a day; is that doable?

18 MR. GOETZ: Yes, Your Honor. We can file it before
19 then if you'd like to see it.

20 THE COURT: No, no. March 12th is fine.

21 MR. GOETZ: Yes, Your Honor.

22 THE COURT: Okay. So that will be due March 12th.
23 Now, let's schedule -- now let's set a briefing schedule for
24 the motion for jurisdictional discovery. I'd like to do this
25 the same day. I'd like to do this on February 28th. Is that

1 doable, Mr. Macyda?

2 MR. MACYDA: Yes, Your Honor.

3 THE COURT: Do you need more than ten pages for your
4 motion to support?

5 MR. MACYDA: Can I have 15, please?

6 THE COURT: Okay, fifteen.

7 Let's go March 12th for a response date, with 15
8 pages. Does that work?

9 MR. GOETZ: Yes, Your Honor.

10 THE COURT: Do you think you need a reply for this?

11 MR. MACYDA: I would say so, just given the litigation
12 history.

13 THE COURT: Okay. So March 12th -- how about a six
14 page reply? How about eight days for a six page reply,
15 March 20th? Is that doable?

16 MR. MACYDA: Yes, Your Honor.

17 THE COURT: Okay.

18 All right. What I will try to do is I will look in
19 earnest at your service for publication motion.

20 I understand there's no opposition to that motion at
21 present. Is that right?

22 MR. MACYDA: That's correct.

23 THE COURT: Okay. If -- if service by publication is
24 permitted and if no appearance is entered on behalf of the
25 three entities for which service by publication is sought,

1 would it be your next step to move for default and then follow
2 that with a request for default judgment?

3 MR. MACYDA: I believe that would be our intent,
4 Your Honor, if they don't timely respond. I think that is what
5 we have to do.

6 THE COURT: And what is the statute of limitations for
7 these transactions that took place in 2010?

8 MR. MACYDA: Well, I believe it depends on the claim.
9 The shortest statute of limitation I believe is going to be two
10 years. The contract, I believe -- and again, Your Honor, I'm
11 doing this off the top of my head.

12 THE COURT: No, I -- contracts usually are pretty
13 lengthy.

14 MR. MACYDA: Probably five to six, but we believe it
15 would be tolled under various common law.

16 THE COURT: Discovery rules, sort of, fraud and
17 discovery rules?

18 MR. MACYDA: Correct.

19 THE COURT: And so what is the -- does your complaint
20 set forth the date that you discovered the alleged, you know,
21 I'll call it the fraud because that's probably the exception to
22 the discovery rule that you would be using; does your complaint
23 set forth the date that these actions were actually discovered
24 by Plaintiffs?

25 MR. MACYDA: Yes. On or about -- I believe we used

1 November 2016.

2 THE COURT: Okay. So is it your position that each
3 one of the counts against the currently -- the three Defendants
4 subject to your motion for service by publication were all
5 within the shortest possible statute of limitations based on
6 your claims of discovery?

7 MR. MACYDA: Correct.

8 THE COURT: Okay. All right. What if it turns out
9 that in the course of discovery or litigation in this case
10 other facts become known to the Court that show that the
11 discovery was earlier than the date that you allege? It would
12 seem that -- it would make sense to -- if service by
13 publication is granted, to at least withhold a default judgment
14 until other facts that are related to these transactions or
15 occurrences can be resolved because there's a strong preference
16 in the Federal Courts, and I hope all courts, to litigate cases
17 on the merits and not by default and not through court order
18 that are something other than the merits.

19 Would you have any objection to holding off and
20 staying any entries of default until -- if we get to the point
21 that discovery in this case occurs -- discovery would be
22 complete?

23 MR. MACYDA: Your Honor, I don't think objections is
24 the word I would use. I would say -- I think at a minimum they
25 should be held in default, not necessarily default judgment.

1 And then they could show whatever the legal standard is to set
2 aside that default; and if they meet it, then they're back in
3 the case. But I believe what Your Honor is driving at is you
4 want to enter a default judgment if other facts come to light,
5 and in that sense we would not have an objection to that,
6 Judge.

7 THE COURT: Okay. I don't think -- kind of given
8 where this case is, beyond those two briefing schedules,
9 there's not a lot that I have. I don't think that we can
10 really meaningfully engage in any other kind of Rule 26(f)
11 conversations at this stage of the game. It's going to depend
12 on those briefing schedules. The briefing appears to be
13 dispositive. Those are requests for certain discovery; and
14 when you brief the discovery that you want, any motion for
15 discovery is much, much more successful, at least here, if it
16 specifies precisely the volume of discovery you want and the
17 reason you want it.

18 If you say I want three depositions of four hours each
19 of these people, okay, I can get my head around that. If you
20 just say open the doors to discovery so I can do some
21 jurisdictional discovery, that's harder. That's a taller ask.

22 All right. Let me hear from SSG Defendants. Is there
23 anything else that you'd like to add? We've set the two
24 briefing schedules; I don't think there's too much we can do.
25 It's almost like your motion for an initial conference was

1 granted instead of the Rule 26(f) conference, but it wasn't;
2 but is there anything else that you'd like to add?

3 MR. GOETZ: No. No, Your Honor, we look forward to
4 receiving service and the summons and complaint from Mr. Macyda
5 and Mr. Rodkey by the end of this week.

6 THE COURT: Okay. Good. I have nothing further.

7 Mr. Macyda, anything further?

8 MR. MACYDA: No, Judge.

9 THE COURT: Thank you.

10 MS. ABBOTT, DEPUTY CLERK: All rise.

11 (Hearing concluded at 10:05 a.m.)

12 C E R T I F I C A T E

13 I, Shirley Ann Hall, certify that the foregoing is a correct
14 transcript for the record of proceedings in the above-titled
15 matter.

16
17
18 s/Shirley Ann Hall
19 Shirley Ann Hall, RDR, CRR
20 Official Court Reporter
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